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THE RECALL OF JUDGES

By Senator Robert L. Owen.

The Federal judges should be elected subject to recall by resolution of Congress. This policy should be pursued to keep them in sympathy with the matured judgment of the American people.

The same reasoning which justified the States in the control of the State judiciary applies to the Federal judiciary with equal force and conclusiveness.

I have heretofore pointed out, on the floor of the Senate, (July 31, 1911), the reasons justifying this matter, at some length, which will also be found in Senate Document 249, Sixty-second Congress, Second Session.

The States have realized the importance of this doctrine, as the record referred to will show, in the most remarkable manner. Thirty-seven States nominate and elect State judges by the voters of the State. Six States elect judges by the General Assembly, and five States appoint judges by the governor, who is himself directly nominated and elected by the people.

In addition to these precautions, three of the States (including Arizona) provide for the recall of judges in four different ways, to wit: impeachment, legislative recall, automatic recall by fixed tenure, and popular recall by the nomination of a successor on petition.

Thirty-five States have three ways of recalling judges—impeachment, automatic recall and legislative recall. Forty-eight States have two ways of recalling—impeachment and either legislative recall or automatic recall by fixed tenure.

Impeachment is wholly inadequate for practical purposes. It can only be invoked for the most serious crimes, and so many obstacles lie in the way of an impeachment proceeding that the people will bear with an unworthy, an unjust or unfit judge rather than invoke this extreme and drastic remedy.

The British parliament established the right to recall judges in 1701 as a remedy for the bad conduct of Lord Chief Justice Jeffreys, one of the most notable criminals that ever occupied high position in the judiciary. They have had no trouble since they established the right of recall.

The States of the Union have had no trouble of a serious nature with their State judges where they have exercised the right of recall.

THE REASONS FOR THE RECALL.

Impeachment is too severe a remedy in certain cases, and is impracticable for offenses justifying removal but not deserving impeachment, which latter power should only be invoked for actual personal corruption or serious criminal conduct, and even in such cases the recall is a more benign remedy.

The legislative recall may properly be invoked in cases where there is no personal delinquency. It may be invoked for senility, insanity, imbecility, paresis, or for willful neglect of duty, inefficiency, gross incompetency, intemperance, or for any persistent tyrannical, malicious or detestable conduct. Any or all of these things may arise in the life of an individual, due to physical, mental or moral decadence. Thoughtful men must concede that even a judge on the bench may go through physical, mental or moral decay. He may become a neurotic, a paranoiac or an epileptic. He may become imbecile or afflicted with softening of the brain. He may entertain a point of view antagonistic to the matured judgment of the people whose public servant he is, and persistently nullify humane statutes by his obsequious recognition of unworthy precedents or unsound argument in favor of corporate or other privileges. May heaven defend our beloved judiciary from any or all of these human afflictions and frailties, but *to maintain that the public shall not have a convenient remedy against an unfit judge is to deny the obvious and to contradict the plainest canons of truth and of common sense.*

I have pointed out at some length the dangerous and mischievous opinions coming from an uncontrolled and unrestrained judiciary. I shall not repeat them here. The public press is being filled with instances.

All of the great political parties have had planks condemning the abuses of judicial power, as I have pointed out.

The Federal judiciary has become the bulwark of privilege, and if there be no way to control the Federal judiciary except by impeachment the art of government has come down to this:

THE ART OF NOMINATING JUDGES WITH THE RIGHT POINT OF VIEW.

This art involves the art of nominating presidents who appoint these judges, through machine politics, the use of Federal patron-

age and "steam roller" processes and using wholesale national corruption and coercion at the ballot box as the first practical step of practical men in arriving at the "practical" results of nominating judges who are the *right* kind of men; that is, nominating judges who have the point of view favorable to those who manipulate the governing powers to promote commercial or financial policies acceptable and beneficial to themselves.

THE OBJECTIONS.

Those who object to the recall of Federal judges have the impudence to say that the people who can be trusted to select governors, congressmen and presidents cannot be trusted to elect or to recall judges! We hear much about the people being "impulsive," "excitable," "turbulent," and a variety of other adjectives are used with the intention to portray the people as an *irresponsible mob*. The convention system approaches more nearly the mob system than the quiet citizen in the safeguard of the ballot-box. The people are not a mob: they are "safe and sane;" they are wise; they are benevolent; they are patient and considerate. They do not move too fast. They seem surely to move too slowly in dealing with those who unjustly treat them and who hold their honors and dignities and do not hesitate, at the same time, to libel them.

THE MOST CONSERVATIVE, SANE FORCE IN THIS NATION IS THE RULE OF THE HONEST MAJORITY.

The rule of the honest majority leads people to justice and to righteousness. The Tory argument that the people cannot be trusted is unendurable in a republic where every bill of rights in every State in the Nation *declares the sovereignty to be vested in the people*, and this great doctrine has become such a world-wide force that within the past few days the Manchu dynasty in China has abdicated and has formally, by proclamation, *declared the sovereignty of China to vest in the Chinese people*. A doctrine which has been abandoned in China should not be asserted in the United States. To deny the people the right to exercise sovereign power over judges is to deny this principle. Such a denial is unendurable, indecent, and political insanity.

I believe in the rule of the people, in giving them direct power, knowing that the American people are "safe and sane," that they

are a religious, industrious, intelligent, self-controlled, and benevolent people, who will never deal unjustly with a judge or with any other public servant.

The thoughtless barrister, whose fortunes depend upon the favor of the judge or judges who rule the court where he practices, "may bend the pregnant hinges of the knee" that "thrift may following fawning," but the legal profession will do well to give its great intelligence to improving the whole judicial system which is no longer in harmony with the speedy or honest administration of justice. The legal procedure of the United States needs a thorough overhauling that justice to the rich and to the poor alike may be possible of speedy economical conclusion.

The American people are losing confidence in the courts, and both in the bench and bar, because of the difficulty of a poor man cheaply obtaining immediate justice in his civil and personal rights.

Robert L. Owen.